

STATE OF WISCONSIN

PERSONNEL COMMISSION

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FLORENCE OLSON,

Appellant,

v.

Secretary, DEPARTMENT OF  
ADMINISTRATION and  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondents.

Case No. 92-0731-PC

\* \* \* \* \*

FINAL  
DECISION  
AND  
ORDER

This matter is before the Commission on the following issue:

Whether respondents' decision to deny the request for reclassification from Program Assistant 3 to Program Assistant 4 was correct.

The appellant serves as leadworker in the Management Services Section, Bureau of Administrative Services, Division of Facilities Development, Department of Administration. She reports to the section chief, whose position is classified at the Administrative Assistant 4 level.

The appellant's work goals and time allocations are as follows:

- 14% A. Conduct public bid openings for construction projects
- 19% B. Formulate project budget letters for Administrator's signature
- 5% C. Schedule bid opening dates for Division projects
- 45% D. Preparation and processing of construction contracts (This goal includes serving as lead worker of Contracts Unit)
- 5% E. Receive & review Affirmative Action plans and exemption forms
- 2% F. Prepare revised budget letters
- 7% G. Prepare work orders for new projects

2% H. Receive and review insurance claims

1% I. Miscellaneous

In performing her work, the appellant has a relatively limited amount of discretion. Much of her work involves taking specific information from readily identified sources and placing the information in a different format. Her bid opening responsibilities are tightly constrained by the very specific requirements spelled out in the Administrative Code.

The class specifications for the Program Assistant series include the following language:

#### PROGRAM ASSISTANT 3

This is paraprofessional work of moderate difficulty providing a wide variety of program support assistance to supervisory, professional or administrative staff. Positions are delegated authority to exercise judgment and decision making along program lines that are governed by a variety of complex rules and regulations. Independence of action and impact across program lines is significant at this level. Positions at this level devote more time to administration and coordination of program activities than to the actual performance of clerical tasks. Work is performed under general supervision.

#### PROGRAM ASSISTANT 4

This is paraprofessional staff support work of considerable difficulty as an assistant to the head of a major program function or organization activity. Positions allocated to this class are coordinative and administrative in nature. Positions typically exercise a significant degree of independence and latitude for decision making and may also function as leadworkers. Positions at this level are differentiated from lower-level Program Assistants on the basis of the size and scope of the program involved, the independence of action, degree of involvement and impact of decisions and judgment required by the position. Work is performed under direction.

The specifications also define "moderate difficulty" as work "susceptible to different methods of solution which in turn places a correspondingly higher demand on resourcefulness." "Considerable difficulty" describes work for which "many factors must be considered and weighed before a decision can be reached."

The appellant performs her work "under direction" rather than under "general supervision." However, in all other respects, her duties are better described at the PA 3 level than at the PA 4 level. The appellant cannot be said to serve as "an assistant to the head of a major program function or organization activity" as specified at the PA 4 level. Much of the appellant's time is spent performing relatively straightforward preparation and review of documents which do not require any significant exercise of discretion. While the appellant does serve as leadworker for a Program Assistant 2 position and an LTE position, these two positions are primarily responsible for typing, photocopying and filing. The work examples listed at the PA 3 level clearly indicate that lead work responsibility is not excluded from the PA 3 level.

The various comparison positions identified at hearing also do not support classification of the appellant's position at the PA 4 level. For example, the PA 4 position filled by Alice Culp (Respondent's Exhibit 6) serves as assistant to the Division Administrator in the same division (Division of Facilities Development) as the appellant's position. Ms. Culp composes "sensitive and confidential correspondence" for the Administrator and Secretary, acts as liaison between the Administrator and other divisions, agencies and levels of government, drafts press releases, schedules meetings of the Building Commission and composes the minutes from those meetings. The Culp position fits the language of the PA 4 specification and has a much broader discretion than the appellant's position.

The appellant established that the previous incumbent in her position, Harlan Davison, had been classified at the Administrative Assistant 3 level. Appellant's witnesses offered testimony to the effect that there had been no significant change in duties from the time they were performed by Mr. Davison and as they are currently performed by the appellant. Respondent offered testimony establishing that the position in question, filled by Mr. Davison, was classified at the AA 3 level in 1963 when it served as the Chief of the Administrative Services Section in DOA's Bureau of Engineering. At that time, capital accounting and capital finance were both functional areas found within the Bureau of Engineering. Those areas were subsequently moved to other bureaus, prior to Mr. Davison's retirement in 1989. Therefore, Mr. Davison's administrative support responsibilities were broader *in 1963* than the appellant's are currently, and appear to be more closely analogous to at

least the title of appellant's supervisor, Patricia Hillestad, who is section chief of the Management Services Section. At the time he retired, Mr. Davison was no longer a section chief. Respondent's classification analyst admitted to being shocked that Mr. Davison's duties were classified at the AA 3 level at the time of his retirement.

The Administrative Assistant 3 specifications are not part of the record in this matter. However, it is apparent that Mr. Davison's position was misclassified at the time of his retirement. In Augustine & Brown v. DATCP [& DER], 84-0036, 0037-PC, 9/12/84, the Commission found that to reclassify a position simply because another comparable position was inappropriately classified would compound an error and ignore the requirement that a position meet the class specifications. Here, where respondent has acknowledged that the Davison position was misclassified at the AA 3 level as of 1989, it does not provide a basis for moving the appellant's position from PA 3 to PA 4.<sup>1</sup>

The appellant also contended that her former second level supervisor, Harlan Verhage,<sup>2</sup> Assistant Director of the Bureau of Administrative Services, promised her that her position would be reclassified to the PA 4 level after she assumed Mr. Davison's responsibilities of bid openings and processing contracts upon his retirement. The Commission's predecessor, the Personnel Board specifically rejected the contention that a promise to reclassify, based upon the assumption of duties upon another employe's retirement, is binding on an agency. Ryczek v. Wettengel, 73-26, 7/3/74.

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<sup>1</sup>In her post-hearing brief, the appellant raised the allegation that the decision not to reclassify her position constituted sex discrimination, because Mr. Davison had been at a higher classification level. The issue for hearing in this matter made no reference to such an allegation and the jurisdictional basis for the hearing was identified in the November 20, 1992, conference report as §230.44(1)(b), Stats., with no reference to the Fair Employment Act. The appellant would have to seek to amend her appeal to add such a claim, and pursuant to §PC 3.02(2), Wis. Adm. Code, the Commission would have to approve such a request to amend. The record established at the hearing on the appeal does not appear to support such a claim, based both on the conclusion that the appellant did not show that the decision not to reclassify her position was incorrect, and on the fact that a woman, Ms. Mary Becker, was the personnel specialist who effectively denied the appellant's reclassification request.

<sup>2</sup>The proposed decision in this matter incorrectly referred to David Ward rather than Mr. Verhage. This reference has been corrected.

In reaching this decision, the Commission did not consider the extra record materials filed by appellant's supervisor, after the conclusion of the hearing.


ORDER


The decision of respondents declining to reclassify the appellant's position to the Program Assistant 4 level is affirmed and this appeal is dismissed.

Dated: February 3, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms  
K:D:Merits-reclass (Olson)

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

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NOTICE  
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)